

Syllabus.

U. S. 405, wherein we held that the plaintiff was bound to show he had personally suffered an injury before he could institute a bill for relief. In short, the case made by the plaintiff is purely academic. For aught that appears, the proceedings may have been perfectly regular, and his bill rests solely upon the proposition that there may have been irregularities in the sheriff's sale, and that, if there were, the statute validating the deed, notwithstanding such irregularities, is unconstitutional, and deprives him of his property without due process of law. This proposition contains its own answer.

The exact case then made by the bill is this. The plaintiff seeks to avoid a sale made twelve years before by an allegation that the record, namely, the sheriff's return of the sale, does not show a compliance with the statute in certain particulars, without also averring that in fact there was a failure to perform some step required by law. To hold a sale invalid upon these allegations might result in upsetting every sale for taxes made in West Virginia for the past twenty years.

We are of the opinion that no case is made by the bill, that the judgment of the Circuit Court is correct, and it is therefore

Affirmed.

BAKER v. BALDWIN.

ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

No. 4. Submitted October 14, 1902.—Decided November 3, 1902.

The Supreme Court of Michigan affirmed a decree compelling the release of a mortgage, payment whereof had been tendered in silver dollars coined after 1878 and refused on the ground that the legal tender provisions of the act of Congress of February 28, 1878, were unconstitutional. As such decision was not against the validity of the statute but sustained its validity, and as the jurisdiction of this court over the judgments and decrees of state courts in suits involving the validity of statutes of the Uni-

Opinion of the Court.

ted States can only be exercised under section 709 of the Revised Statutes when the decision is against their validity, the writ of error was dismissed.

THE case is stated in the opinion of the court.

Mr Albert B. Hall and *Mr Fred A. Baker, in propria persona*, for plaintiff in error.

Mr Timothy E. Tarsney for defendant in error.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This was a bill filed by Stephen Baldwin in the Circuit Court for the county of Oakland, Michigan, against Fred A. Baker, to compel the release of a mortgage given to secure payment of a promissory note for three hundred and thirty dollars, dated January 12, 1894, and payable in three years thereafter.

Baldwin had purchased the land subject to the mortgage, which had been assigned to Baker, and tendered the amount due thereon in silver dollars coined after 1878. This tender Baker declined to accept on the ground that the legal tender provisions of the act of Congress of February 28, 1878, entitled "An act to authorize the coinage of the standard silver dollar, and to restore its legal-tender character," 20 Stat. 25, c. 20, were unconstitutional, and refused to discharge the mortgage as demanded by Baldwin.

The Circuit Court for Oakland County entered a decree in accordance with the prayer of the bill, and Baker carried the cause by appeal to the Supreme Court of Michigan, which affirmed the decree. *Baldwin v Baker*, 121 Michigan, 259. This writ of error was then allowed.

The Supreme Court of Michigan said "The sole question presented is whether the act in question, making the silver dollar of 412.5 grains troy of standard silver a full legal tender for all debts and dues, public and private, is constitutional," and held that it was. That decision is assigned for error but it was not a decision against the validity of the statute, and on the contrary sustained its validity

Statement of the Case.

As our jurisdiction over the judgments and decrees of state courts in suits in which the validity of statutes of the United States is drawn in question can only be exercised, under section 709 of the Revised Statutes, when the decision is against their validity the writ of error cannot be maintained. *Missouri v. Andriano*, 138 U. S. 496, *Rae v Homestead Loan and Guaranty Company*, 176 U. S. 121.

Writ of error dismissed.

KANSAS CITY SUBURBAN BELT RAILWAY COMPANY v. HERMAN.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 321. Submitted October 20, 1902.—Decided November 3, 1902.

While an action commenced in a state court against two defendants, one of whom is a resident and the other a non-resident, may be removed to the Circuit Court of the United States by the non-resident defendant if it can be shown that the cause of action is separable and the resident defendant is joined fraudulently for the purpose of preventing the removal of the cause to the Federal court, such removal cannot be had if it does not appear that the resident defendant, is fraudulently joined for such purpose.

This rule will be adhered to even if on the trial of the action the lower court holds that no evidence was given by the plaintiff tending to show liability of the resident defendant, and a second application for removal from the state to the Federal court has been made and denied after a trial, and the trial court has sustained a demurrer to the evidence as to the resident defendant, and where it appears that the ruling was on the merits and *in invitum*.

Powers v. Chesapeake & Ohio Railway Company, 169 U. S. 92, distinguished, and *Whitcomb v. Smithson*, 175 U. S. 635, followed.

Where a fraudulent joinder of defendants is averred by the party petitioning for removal and is specifically denied, the petitioner has the affirmative of the issue.

This was an action brought by Andrew Herman, a minor, by his next friend, in the Court of Common Pleas of Wyandotte County, Kansas, September 18, 1897, against the Union